

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEX NO.
07 CIV 5941 (LTS)

CAREMARK, INC., d/b/a CAREMARK THERAPEUTIC
SERVICES,

Plaintiff,

-against-

MOTION TO REMAND

UNITED HEALTH CARE, ANCILLARY CARE
MANAGEMENT, and THE CINTAS CORPORATION
HEALTH PLAN,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

ABRAHAM WAX, being duly sworn deposes and says that:

1. I am the attorney for the plaintiff, and I am familiar with the facts, having handled this case from before its inception. I make this affidavit in support of plaintiff's motion to remand, under *28 USC § 1446(b)*.

2. This is an action for treatment rendered by the plaintiff to an Allen Everett, who was covered by a health insurance policy issued by the defendants.

3. The plaintiff treated the patient and sent invoices for \$159,120.00 to the defendants. The defendants refused to pay the sum due.

4. On May 9, 2007, this office filed an action in the Supreme Court of New York County. On May 22, 2007, the defendant UNITED HEALTH CARE was served with the summons and complaint by a process server who went to defendant's address in New York. The process server was guided to the defendant's offices on

the 8th Floor, where he served a lady named Nelmira Garnes, who informed him that she was authorized to accept service of the summons and complaint as is shown by his affidavit of service attached hereto as EXHIBIT A.

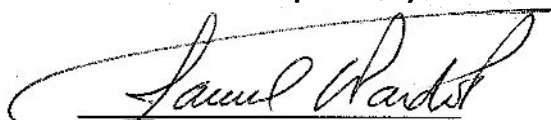
5. The defendant UNITED HEALTH CARE proceeded to remove this case on June 22, 2007. However, May has 31 days and so the removal was done after 31 days instead of 30 days.

6. In order to remove a case defendant must strictly comply with statutory requirements. See *Bertrand v. Vingan*, 899 F.Supp. 1198 (S.D.N.Y. 1995); *Nicola Prod. Corp.*, 682 F.Supp. at 172. Failure to file within 30 days defeats the removal petition.

WHEREFORE, Plaintiff seeks a remand of this case back to the Supreme Court, New York County, as it was untimely removed to this Court.


ABRAHAM WAX

Sworn to before me this
11th day of July, 2007


Notary Public

MANUEL G. PARDO
Notary Public, State of New York
No. 01PA5044272
Qualified in Queens County
Commission Expires May 30, 2011